

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6611

PETITION OF LISA YE

OPINION OF THE BOARD
(Opinion Adopted May 1, 2019)
(Effective Date of Opinion: May 8, 2019)

Case No. A-6611 is an application for two variances necessary for an existing one-story side addition. The existing structure requires a variance of 6.67 feet as it is within 1.33 feet of the right side lot line. The required setback is eight (8) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, because the existing structure reduces the sum of both side yards to 11.33 feet, a second variance of 6.67 feet is required from the required eighteen (18) foot sum of both side yard setbacks required by Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on May 1, 2019. Petitioner Lisa Ye appeared in support of the requested variance with her son, John Ye.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 9, Block 4, Glenhaven Subdivision, located at 1716 Alberti Drive, Silver Spring, Maryland 20902, in the R-60 Zone. It is a rectangular property, 60 feet wide and 120 feet deep, with an area of 7,200 square feet. The property abuts a 15-foot wide path to the west. See Exhibits 4(a), (b), and (c).

2. The Petitioner's Statement of Justification ("Statement") notes that "[t]he property is abutting [a] County access walkway with 14 feet wide separation from [the] next property," later explaining that there is "a good separation distance from the next door property due to the 14 feet County property between the two houses." See Exhibit 3. The Zoning Vicinity Map shows that the subject property abuts a large property, presumably a school, to the rear, and the record contains photographs showing this walkway along the side of the subject property and back to the larger property. See Exhibits 5(e), 5(f), and 7.

3. The Statement indicates that the Petitioner purchased the subject property in 1996, and that “there was an existing shed attached to the side of the building,” which is 16 inches from the right side lot line. See Exhibit 3. In addition to the site plan showing the need for the variances, the Petitioner attaches two old surveys to her Statement, one from 1993 and the second from 1996, both of which show this existing one-story side addition and label it a “shed.” See Exhibits 4(a), (b), and (c). The Statement asserts that the variance request satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance (“the proposed development uses an existing legal nonconforming property or structure”) because “from the 1993 and 1996 site surveys of record, the shed was already labeled and existed,” as well as Section 59-7.3.2.E.2.b (“the special circumstances or conditions are not the result of actions by the applicant”), since the Petitioner “purchased the house with the shed already there.” See Exhibit 3.

4. The Statement asserts that the variance request satisfies Section 59-7.3.2.E.2.a.v of the Zoning Ordinance (“the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood”) because “for over 20 years, the structure existed and blended in with the surrounding unchallenged, with lush vegetation fully surrounding it. See Exhibit IV for a screenshot from 2014 Google Maps.” See Exhibits 3 and 5(f). The Statement also indicates that there are three other similar structures in the neighborhood, and notes that in 23 years, no one has ever complained about the addition (shed) in question. See Exhibits 3, 5(b), 5(c), and 5(d). Thus the Petitioner concludes that the requested variances can be granted without substantial impairment to the general plan and applicable master plan, and will not be adverse to the use and enjoyment of abutting and confronting properties. See Exhibit 3.

5. The Statement indicates that the Petitioner has made needed repairs to this existing one-story side addition (shed), replacing the roofing and siding. See Exhibit 3. At the hearing, the Petitioner’s son testified that these repairs did not increase the footprint of the existing structure.

6. The Petitioner’s son testified that the existing one-story side addition, which he referred to as a shed, was part of the house when his mother purchased the property over twenty years ago, and that it has been in continuous and peaceful use since that time, without complaint. He testified that surveys in the County’s records reflect the long-standing presence of this attached shed. He testified that his mother had undertaken in good faith to repair this shed (roofing and siding), and that it was at that time that she was instructed to get a building permit, which revealed the setback infractions and the need for variances. He confirmed that there is a 15-foot wide path on the right side of the property, and testified that his mother had requested and received letters for support for the grant of the variance from several neighbors. See Exhibit 10.

FINDINGS OF THE BOARD

Based on the binding testimony of the Petitioner’s son and the evidence of record, the Board finds that the requested variances can be granted. The requested variances

comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the existing single-story side addition (shed), which existed when the Petitioner purchased the subject property and which does not comply with the required side lot line setback or the sum of both sides setback, is a nonconforming structure. Thus the Board finds that this application, which requests that this existing structure be permitted to remain in its current location, satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the one-story side addition at issue (shed) existed when the Petitioner purchased the subject property in 1996, and therefore the Board finds that the Petitioner is not responsible for the nonconforming proximity of this existing structure to the right side lot line.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that without the grant of the requested variances, the only way for the Petitioner to achieve full compliance with the Zoning Ordinance would be to remove this existing structure, which was part of this home when the Petitioner purchased the property in 1996 and which the Petitioner has recently renovated. The Board further finds that removal of this structure, which has existed without complaint in its present location since a time before the Petitioner took ownership of this property, would render conformance with the Zoning Ordinance unnecessarily burdensome and do substantial injustice to the Petitioner, thus constituting a practical difficulty, and that the grant of the requested variances, necessary to allow this structure to remain in place, is the minimum necessary to overcome this practical difficulty.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the requested variances will allow the continued residential use of this property, and thus can be granted without substantial impairment to the intent and integrity of the Master Plan for the Communities of Kensington-Wheaton (1989).

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting the requested variances, which do not permit new construction but rather allow an existing structure to remain where it has been for decades, will not adversely affect the use and enjoyment of abutting or confronting properties. The Board notes that the Petitioner has submitted letters of support for the grant of the requested variances, and that no opposition was received. In addition, the Board notes that the side lot line on which the existing structure encroaches is bordered by a 15-foot wide walkway, which provides an additional buffer from the neighboring property. Thus the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances for this existing structure are **granted**, subject to the following condition:

1. Petitioner shall be bound by the testimony of her son and by the exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Stanley B. Boyd, Vice Chair, and Bruce Goldensohn in agreement, and with Jon W. Cook necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of May, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.